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CASE FOR A VALIDATION ACT REGARDING THE RULE PROVIDING FOR APPEALS UNDER MADRAS ACT IV OF 1938.

It is one of the obvious duties of the Government to set at rest all doubts relating to the competency of rules and regulations intended to direct and regulate proceedings in Courts. This duty, (the Government is bound to recognise), is imperative in the larger interests of administration of justice and in such cases a Government worthy of its responsibilities ought to be alert and quick in motion. Such a situation has arisen at present in this Presidency consequent on the ruling given by the Full Bench of the Madras High Court in *Nagappa* v. *Annapoorani*[1].

The opinion of the Full Bench as expressed appears to travel a wider ground than what the facts of the particular case would warrant. On the facts of the case that led to the Full Bench reference, an application under the Agriculturists' Relief Act was provided by section 19 of the Act, and the competency of the Provincial Government to provide for an appeal against an order passed under section 19 by the original Court to which the application lay came up for consideration. The Full Bench held that the rule-making power under S. 28 of the Agriculturists' Relief Act could not and did not extend to providing an appeal and an appellate forum on orders which under the statute would be final without any further right of appeal.

The question would arise whether the Full Bench decision would at all apply to a case where the original application to the Court itself was left to be provided for by the rule-making power and the Provincial Government in the exercise of their rule-making power provided for applications before original courts subject to orders thereon being appealable under the very same rules.

1. (1941) 1 M.L.J. 164 (F.B.).

Prima facie where a statute provides for an application and a judgment thereon by an original Court, no appeal would lie from it to an appellate forum except in the only case of a similar statutory provision providing for an appeal and constituting an appellate forum. This rule is obviously subject to a further limitation that where by a pleading, whether called an application or a suit, a dispute is brought for adjudication before the ordinary Courts, in the absence of any special provisions to the contrary, the procedure of the court will govern the hearing of the dispute and the decision arrived at therein will, in matters relating to appeal, be subject to the very same provisions that govern its other decisions. *National Telephone Co. Ltd.*, v. *Postmaster-General*[1].

While the rule-making power under the Agriculturists' Relief Act, may or may not include a power to provide for appeals against orders on applications provided by the Act and in respect of which the Act is silent, it will not follow that where the Act has not provided for an application, the statutory power of making rules for the proper working of the Act must necessarily be limited to providing for an application to an original court and that no further provision could be made for appeals in respect of orders on that application.

Under the new Constitution Act, apart from the subjects exclusively reserved for the Federal Legislature, the Provincial Legislative authority is plenary and absolute. The Madras Agriculturists' Relief Act has left it to the Provincial Government to make rules for the proper working of the Act and the rules framed by the Provincial Government by virtue of this power would be quite as valid as the original legislation itself. The legislature is competent to frame the rule and if the legislature asked the Provincial Government to frame the rules and those rules were reported to the legislature sitting in its session and were accepted by it expressly or impliedly the objection that the rule was *ultra vires* would lose most of its force, if not entirely. A rule like the one in question would be vitiated if at all only by an irregularity in procedure, *vide Attorney-General* v. *Sillem*.[2] The Government of India Act, S. 87 cures all irregularities of procedure.

Any way the doubts and implications created by the Full Bench pronouncement must be set at rest by an early retrospective Validation Act as considerable unsettlement of rights has ensued and is bound to ensue. It must be remembered that the Act itself unsettled the condition of things existing before and was designed to afford remedial relief to agriculturist debtors. Where part of the machinery provided for working the Act has been pronounced to be incompetent and *ultra vires* it is the immediate and imperative duty of the Govern-

1. (1913) A.C. 546. 2. 10 H.L.C. 704=11 E.R. 1200.

ment to take the situation on hand and secure for the provisions that have been acted on all over the Presidency that authority, without which a good part of the activities of courts, public officers and of private parties for the best part of two years would prove to be an absolute waste.

The case for immediate remedial legislation is rendered the more strong and the more uncontestable when it is remembered that the point of decision by the Full Bench was one on which there was a difference of opinion between two division Benches of the High Court. One judgment was given on 21-7-1939, another on 20-9-1939, and on 28—10—1939, the rule in question was framed to resolve the difficulty in working the Act consequent on the divergence of judicial opinion as to the nature of the judicial proceeding intended by the Act.

Nor is it intrinsically very clear, why if an application is provided for by the statute, the rule-making power should not prescribe the form of the application and the nature of the jurisdiction invoked by the application and the nature of the order which may be passed on that application necessarily affecting its appealability and nature, matters in respect of which the statute is silent. There could be no question that the rule-making power could be invoked to solve difficulties in the working of the Act and if on a matter arising under the Act two Judges took one view as to the form and nature of an application and two other Judges took another view, the situation did certainly involve a difficulty in the working of the Act which the Provincial Government is expressly authorised to resolve by its rule-making power, S. 28 (2) (c).

These considerations are not adverted to in the judgment of the Full Bench. A comprehensive Validation Act retrospective in its operation is called for and it is hoped that the Provincial Government would not delay taking action.

[*Contributed*]

SUBSOIL RIGHTS

Rights to mines, minerals and quarries in permanently settled Estates

BY

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Land-revenue is the mainstay of Indian finance. Various theories have been advanced by the Hindu jurists of old about the relative position of the king and the tiller of the soil in connection with the determination of the nature and extent of the King's grain share.

It is not a fact that mines were unknown to the early Hindu jurists and administrators. The Arthasastra of Kautilya refers to the use of mines for state purposes. A reward as heavy as one-sixth was to be awarded to the person communicating the discovery of mines (Arthasastra IV, 1). In ancient times there was a two-fold division of the royal revenue: "The revenue derived from land" and "other kinds of revenue." Income from mines was recognised as a distinct source of royal revenue apart from land revenue and associated charges upon land and belonging to the category of "other kinds of revenue." Kautilya mentions twelve specified classes of mines consisting of (1) Gold, (2) Silver, (3) Diamonds, (4) Precious stones, (5) Pearls, (6) Corals, (7) Conches, (8) Base-metals, (9) Salt, (10), (11) and (12) minerals derived from the earth, stones, and fluids.[1]

Mines were regarded as State monopoly, and while the policy of the Arthasastra tended to confine state management only to those mines that were easy to work the views of other authorities show a marked divergence with regard to the revenue from mines. Thus Vishnu (III, 55) expressly declares that the King should appropriate the whole output of mines, whereas Manu (VII, 62) while mentioning mines as a source of revenue for which trusted officials are to be employed by the kings, directs (VIII, 39) that the king should take only one-half of the minerals. "Evidently the mines were contemplated as worked by private agency," concludes Dr. U. N. Ghosal, "subject to the payment of a tax to the King."[2] The Sukraniti (IV, 2, 118-119) contemplates the imposition of a tax upon mines. This is fixed curiously enough on a graded scale, *viz.*, 1/2 of gold, 1/3 of silver, 1/4 of copper, 1/6 of base metals, tin as well as lead, 1/2 of precious metals and 1/2 of salt after deducting in each case the expenses of production. Dr. Ghosal also refers to some copper-plate grants of A.D. 900, 1010-1050 and 1060 and concludes that the income from mines formed a branch of royal revenue in Assam.[3]

Manu (VIII, 39) says, "Of old hoards and precious minerals in the earth the king is entitled to half by reason of his general protection and because he is the lord paramount of the soil." This grouping of minerals with old hoards is very significant as it shows that minerals were not treated as arising out of the ordinary use of land and a special share apart from the share to be paid by the

1. Contributions to the History of the Hindu Revenue System by Dr. U. N. Ghosal Ph.D., 1929, Ch. V.

2. *Ibid.*, p. 111.

3. *Ibid.*, pp. 247-248.

possessor of land for the purposes of cultivation etc., is reserved for the king.

It may be suggested that the rights of "*Swatva*" (property or proprietary right) and "*Swamya*" (ownership) in land include the right of ownership in the things lying beneath the surface of the soil. It has been suggested that in treatises on Hindu Law (*e.g.*, Vyavahara Chandrika, Book I, Section 1, Cl. 51 and 4; Smriti Chandrika 1, Cl. 25) the rights of "*Swatva*" and "*Swamya*" are described "only in relation to the other rights acquired by the individual owners as against each other," but have no direct bearing upon the prerogative of the Crown as Paramount Lord of the soil[1].

Right to the soil, in an essentially agricultural economy, means the right for the purposes of cultivation of the soil and beyond this, scarcely, if ever, men's attention is drawn while adjusting their rights and obligations to each other and to the State. Moreover the discovery of mines, etc., is quite an accidental phenomenon and one can hardly expect any systematic development of legal conceptions regarding them unless such accidents happen in so large a number and within a certain range of time and space to attract the attention of jurists. Hence it will appear that in the Hindu Revenue system minerals were not treated as part of the soil for the purposes of land revenue.

During the Moghul period, as it appears from the Ain-I-Akbari, mines were not so much known in Subahs of Bengal, Bihar and Orissa. Abul Fazl has mentioned in some detail the mines in Arakan but he has mentioned only the iron mines in Sarkar Bazoha and the diamond mines producing chiefly very small stones at Harpah in Sarkar Madaram, both in Subahs of Bengal[2]. But Mr. W. H. Moreland referring to copper mines in Chotanagpur contends that: "since Fazl's account of them is obviously based on very imperfect knowledge, his silence in the matter is not conclusive.[3] The learned writer also refers to the fact that coal was not mined in India at this period, and the production of iron and copper was limited by the quantity of fuel available within the reach of the places where the existence of ores was known[4].

According to the Mahommedan theory, "*Wazeefa Khiraj*" recognised a proprietary right in the cultivator or tax-payer. This right was however, only "to the productive power of the soil without which the cultivator would not be able to meet his liability for *Khiraj*,"

1. Manu's Land and Trade Laws by R. S. Vaidyanatha Ayyar, p. 69.
2. Ain-I-Akbari by Abul Fazl translated by Colonel H. S. Jarret, (1891) Vol. II, pp. 120, 124.
3. India at the Death of Akbar, An Economic Study, (1920) p. 149.
4. *Ibid.*, p. 147.

but not necessarily to the soil itself and the minerals in it[1]. That this was the extent of the proprietary right is also apparent from the crops basis of assessment in Akbar's ten years' settlement[2]. Under the Moghuls there were non-agricultural imposts too. Had mines been worked extensively under private enterprise they would have certainly formed a distinct source of Imperial Revenue.

Our land system is a curious amalgam of the Hindu, Mahomedan and Indo-British laws. The contest between the tenure-holder and the Zamindar over mineral rights is now at an end. A series of decisions of the Privy Council and the Indian High Courts have held that a Zamindar is presumed, in respect of lands within his Zamindari, to be the owner of the underground rights thereto appertaining in the absence of evidence that he ever parted with them.

There has been so far no direct decision on the rival claims of a Zamindar and the Government regarding mines. In the *Pachete Raj Case* (*Secretary of State* v. *Jyoti Prasad*, A.I.R. 1926 P.C. 41) there was no doubt an issue : "Was the mouzah in suit permanently settled by Government with the plaintiff's (Jyoti Prasad's) ancestors and is the plaintiff by right of such settlement entitled to the mineral rights under the mouzahs ?". It was held by the High Court at Calcutta that the mouzah was within the permanently settled estate and that Jyoti Prasad was the rightful owner of the minerals in the mouzah and that none of the defendants which included the Secretary of State for India had any right to the minerals in the disputed mouzah. The Privy Council reversed the decision of the High Court on another ground *viz*., that the mouzah was not within the Zamindari of the Raja and expressly left open the question of mineral rights between the Crown and the Zamindar. In *Nageshwar Bux Roy* v. *The Bengal Coal Co., Ltd.*, A.I.R. 1931 P.C. 186 where conflicting views were held by the Subordinate Judge and the High Court, the Privy Council expressly left the question open and proceeded on the assumption that the Zamindar's title embraced rights to minerals. In *Secretary of State* v. *Srinivasachariar*, (1920) I.L.R. 44 Mad. 421=40 M.L.J. 268, where some Shrotriamdars sued the Secretary of State for India for quarrying stones, the suit was decided in favour of the Secretary of State on the construction of the particular grant which was the foundation of the plaintiffs' claim. Sharp differences of opinion exist amongst eminent writers on the subject of land tenures, on the question, who as between the Zamindar and the Crown, is entitled to the subsoil rights.

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1. Phillips' Land Tenures in Lower Bengal, Tagore Law Lectures, (1874-75), p. 47 citing Baillie's Land Tax.

2. Ain-I-Akbari, op. cit. Vol. II, p. 88, *et seq*.

One school of thought led by Phillips holds that the minerals vest in the Crown, and another school led by Dr. Field and Mr. Justice Sarada Charan Mitra holds that by the permanent settlement the mineral rights have been conferred on the Zamindars.

In the opinion of Mr. Justice S. C. Mitra:

"The Anglo-Indian Government has, by the Permanent Settlement, accepted fixed sums as revenue in lieu of all rights it had either as proprietor of the soil or as protector of its subjects. It reserved no right whatsoever, except as treasures under the Treasure Trove Act (Act VI of 1878). Minerals must necessarily pass with the right to the surface. The present theory of the proprietary right of the Government is not consistent with the Hindu theory of the King's right to a share of the produce or of hidden treasures and minerals and the Anglo-Indian Government, having accepted and acted upon the theory of the proprietorship of the soil, cannot now claim a share of the minerals on the latter theory." [1]

Two years before Mr. Justice S. C. Mitra delivered the above lectures, Dr. C. D. Field in his Introduction to the Regulations of the Bengal Code, (page 46, Section 34) observed thus:

"A Zamindari tenure is an absolute right of proprietorship in the soil, subject to the payment of a fixed amount of revenue to Government. If this revenue fall into arrears the estate may be put up to auction and sold to the highest bidder. The purchaser acquires the estate free of all incumbrances created since the time of the Permanent Settlement, and obtains statutory title. A Zamindari is inheritable according to the law of succession by which the proprietor is governed. It is assignable in whole or in part. It may be mortgaged. *The Zamindar can grant leases either for a term or in perpetuity. He is entitled to rent for all land lying within the limits of his Zamindari, and the rights of mining, fishing and other incorporeal rights are included in his proprietorship.*"

The Privy Council has approved the portion in *italics* in *Hari Narayan Singh Deo* v. *Sriram Chakravarti*, (1910) 14 C.W.N. 746 at 751 to show that the Zamindar is entitled to mineral rights as against the holder of a Debottar tenure. Mr. R. Sinha, the learned author of The Law of Landlord and Tenant in Bengal and Bihar (at page 238) has pointed out, and rightly too, that Dr. Field:

"was not considering, in the above passage referred to the relative rights of the Zamindar and the permanent lease-holder under him but rather the relative rights of the Zamindar with whom a permanent settlement had been made and the state."

The view of Dr. Field regarding a Zamindar's right to lease mines derives support from S. 37 of Act XI of 1859 (The Bengal Land Revenue Sales Act). By the time when the perpetual settlement was made the tract covered by that settlement had not disclosed mines or minerals of any great value in its ordinary soil and possibly this accounts for the paucity of controversial literature worth the name in respect of the rights to the mines etc., unlike other matters connected with the land revenue system. There was no investigation of the title preceding the enactment of the Regulations. Nor would

1. The Land-Law of Bengal (with Bihar and Orissa) Tagore Law Lectures (1895) 2nd Edn., 1921, p. 485.

it be correct to say that any question of title was decided as the result of the Permanent Settlement. The basis of the assessment in the language of Baden Powell (The Land Systems of British India Vol. I, pp. 414, 415), was that,

"in order to determine the assessment of each estate no inquiry was made (as under the late settlement procedure) either what the produce was, or what the "rents" were as paid by the raiyats. Reference was simply made to the old records of the lump assessments under the native rulers; and these were roughly adjusted in cases where such adjustment was needed, and the Zamindar or other owner was directed to pay this sum."

Scrutiny was prohibited, says Baden Powell, for fear of making the Zamindars distrust the promise of a Permanent Settlement, and think that the information supplied would be used to enhance the revenue afterwards.

The Zamindars under the Mahomedan Government were mere contractors, collectors, or farmers of revenue receiving a percentage for their trouble and responsibility and small grants of land in the shape of *Nankar* or *Chakran* for their subsistence. We get a glimpse of this in the Sanad for the Zamindary of the Hon'ble East India Company's lands given in 1757 under the seal of Nawab Meeron, Dewan of Subah Bengal. The Zamindari is called an office from which after the expiration of the year the Company is to take a discharge according to custom[1]. It is presumed that the Permanent Settlement made this office hereditary. In the opinion of Mr. Harrington,

"A Zamindar appears to be under the Moghul constitution and practice, a landholder of a peculiar description, not definable by any term in our language."[2]

In the Asiatic Quarterly Review, (July, 1894), Baden Powell has pointed out that in itself the word "*Zamindari*" means (1) the right to the revenue share, (2) the right to dispose of waste and unoccupied lands, and (3) the right to certain mineral royalties etc.[3] But it is clear from the mode of the assessment for the State dues under the Moghuls that mines and minerals did not at all come into the picture perhaps because of its unknown or less known character. In practice then the Zamindari rights were not as large as the meaning given thereto by Baden Powell. At least this much is certain that mines and minerals were not up to the time of Akbar developed to an extent which could invite the attention of men like Todar Mull and Abul Fazl.

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1. A collection of Treaties, Engagements and Sanads compiled by C. U. Aitchison, Vol. II, p. 206, *et seq.*

2. Harrington's Analysis, Vol. II, p. 400 cited in the Great Rent Case, (1865) 3 W.R. Act X Rulings pp. 29 and 31.

3. *See* Firminger's Edition of Fifth Report, Vol. I, Introduction, p. 38.

Coming to more modern times we find that even before 1778 in Beerbhum Zamindary the revenue derived from iron ore within the limits of the Zamindary as well as the assessment paid by the Zamindar to the Government on that account had been "kept distinct from the general land revenue, and entered in the accounts of both the Zamindar and the Government as a separate article" under the denomination of "*Loha Mehal*", perhaps to be distinguished from land mahal.[1] The iron ore was then the subject matter of distinct Government assessment. This shows how the rights to mines and minerals would have been treated had their existence in abundance been known to the early British rulers.

The Permanent Settlement Regulations do not purport to deal directly with mines and minerals. It is to the agriculture of the country that the Regulations are addressed and they were solely concerned with strengthening the sinews of land revenue. S. 1 of Bengal Regulation I of 1793 shows that the Regulation was "relative to the limitation of public demand upon the lands": or in other words it deals with land revenue. Baden Powell observes :

> "If we cannot be content to speak of 'land revenue' and must further define, I should be inclined to regard the charge as more in the nature of a tax on agricultural income."[2]

Let it be said here that the learned author in his work did not direct his special attention to mines and minerals. He says (at p. 238 of Vol. I, *Ibid.*), that "the reservation of a right to mines and minerals and earth oil hardly concerns us in this manual." Then again by S. 7 of Regulation I of 1793 the Governor-General in Council trusts

> "that the proprietors of land, sensible of the benefits conferred upon them by the public assessment being fixed for ever, will *exert themselves in the cultivation of their lands*................"

Again in S. 1 of Bengal Regulation II of 1793 we find,

> "Land must in consequence become the most desirable of all property and the industry of the people will be directed to those improvements in *Agriculture* which are as essential to their own welfare as to the prosperity of the State."

It does not also accord with the scheme of such a settlement which had limited in perpetuity the demand of the State to the share in the annual produce of every *bigha* of land that any person taking under it should have the power to consume its subject-matter by working mines, extracting minerals and by quarrying operations even if an interest in land was created. When mines are worked the capital value of the land is gradually diminished because the land without the minerals, *etc.*, is often worth very little.

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1. Guroo Pershad Bose v. B. Hayara, (1811) 1 Sel. Rep. 452 : 6 I.D.O.S. 311.
2. The Land Systems of British India, Vol. I, p. 240.

The anxiety of the State to protect its revenue as derived from land in the permanently settled tracts is manifest from the enactment in the same year and on the same date, 13th May, 1793, of Bengal Regulation XLIV of that year, along with Regulation I of 1793. This was

"A Regulation for prohibiting the Jumma of dependent Talooks, or granting Leases or Pottahs from a term exceeding ten years; and, in cases of Lands being disposed of at Public Sale for the discharge of arrears of Public Revenue, for rendering null and void all Engagements (with certain exceptions) subsisting between the defaulting Proprietor and his dependent Talookdars, Under-farmers, and Ryots, from the payment of Rent or Revenue on account of the Lands so sold."

Apprehension is expressed in the preamble of the Regulation XLIV that reduction or under-rating of Jumma and letting of land in farm or granting Pottahs for cultivation, at a reduced rent for a long term or in perpetuity if held valid would, "occasion a permanent diminution of the resources of Government arising from the lands," in the event of the rent or revenue reserved being insufficient to discharge the public demand. Commenting on this Regulation the Privy Council in *Ranee Surnamoyee* v. *Maharaja Satish Chandra Roy*, 10 M.I.A. 123, 145, 146 stated that, "the object of the Government was that the Jumma should be duly paid and the means of paying it should not be withdrawn." Much less then the working of mines which practically eats up the corpus of the property would have been countenanced by the then legislators without making up the loss due to this diminution in the capital value of land meant for cultivation by further non-agricultural assessment for this exceptional use of land for other than agricultural user.

Regulation XLIV of 1793, referred to above, by section V and VIII protected a lease or pottah

"for ground for any term of years, or in perpetuity, for the erection of dwelling houses, or buildings for carrying on manufactures, or for gardens, or other purposes, and for offices for such houses or buildings,"

from enhancement or dispossession whenever the whole or any portion of the lands of any Zamindar, independent talookdar, or other actual proprietor of land was sold for the discharge of arrears of the public assessment. S. 30 of Regulation XI of 1822 was almost similar to S. VIII of Regulation XLIV of 1793 with only leases for tanks, canals, and water courses added to it. So far then there is no reference to mines. An Act for amending the Bengal Code in regard to Sales of Land for arrears of Revenue was passed in 1841 as Act XII of that year. S. XXVII (4) protected:

"Lands held under *bona fide* leases at fair rents, temporary or perpetual, for the erection of dwelling houses, or manufactories, or *for mines*, gardens, tanks, canals, places of worship, burial grounds, clearing of jungle, or like beneficial purposes, such lands continuing to be used for the purposes specified in the leases."

It was the Land-holders' Society which suggested the insertion of the words, "mines, minerals and quarries and such buildings as *bona fide* appertain to such works, and are necessary for carrying them on.[1] The only change that has been made in the Bengal Land Revenue Sales Act XI of 1859 in its protecting section 37 (which corresponds with S. 27 of Act XII of 1841) is in regard to "leases of lands...... wherein mines have been sunk." The above provisions are no doubt meant for the purchaser at a revenue sale. It may very well be urged that here at least is a statutory recognition of the Zamindar's right to lease mines, for if it is not so what was then the necessity for protecting them by legislation? It should be noticed that the word 'lease' in the fourth Clause to S. 37 of Act XI of 1859 (The Land Revenue Sales Act) does not only mean a lease from the Bengal Zamindar but includes also a lease granted by a tenure-holder for purposes of the clause (*Kiron Chandra Roy* v. *Naimuddi Talukdar*, I.L.R. 30 Cal. 498). The Hon'ble H. T. Prinsep in his Minute, dated 8th July, 1841 in connexion with the enactment, Act XII of 1841 (Act I of 1845 is also in same terms) says,

> "nor do I object to the 4th clause which provides for building, lease for gardens manufactories, mines, clearing of jungle, and other purposes manifestly beneficial and creative of fresh assets to an estate or such as obviously are in their nature perpetual. In such cases if the new purchaser gets the fair rent of the land prior to its being turned to such purposes, he gets all that the Government had a right to look to as the security for its revenue. The new value created ought not to pass to the purchaser as a part of the estate hypothecated to the Government by the act of Settlement."

Lease for working mines, etc., are not creative of such fresh assets which are in their nature perpetual. If it is conceded that the new value created is not a part of the estate hypothecated to the Government by the Act of Settlement as the Hon'ble H. T. Prinsep seems inclined to hold the very foundation of the claim of the Zamindars to mineral rights by virtue of the permanent Settlement is taken away. There is no manner of doubt that the estate that was created in favour of the Zamindar by the perpetual Settlement remained hypothecated for the revenue which is an absolute first charge. If leases of mines were not hypothecated by the act of Settlement so as to be answerable for the punctual realisation of the revenue they did not then form part of the Settlement too. The provisions of the Revenue Sale Law were enacted in connection with the realisation of "land revenue" and it may be that the legislature having made secure the land revenue showed some eagerness for the development of mining industry. It may be mentioned that Act V of 1859 was among other things, meant "for the develop-

1. Collection of Papers regarding Amendment of the Sale Law, Part I, (Act XII of 1841), Bengal Government Press, 1927, P. 313.

ment of the mineral resources of the country "in which the Ghâtwali lands are situate. In contemporary literature given in the Collection of Papers already cited above there is no trace of the legislature, in enacting the above provisions of the sale law, having ever directed its attention to the question whether the Crown has any right to minerals against the Zamindar apart from its demand for land revenue.

By way of a parallel for the interest in land which had been conferred upon the Zamindars by the perpetual settlement the English Estate in fee simple is often mentioned by almost all writers on the subject. The fee simple is the largest possible estate in the realm of real property. In English law mines and minerals in and under the surface (except gold and silver which belong to the Crown) unless they have been severed from the surface belong to the owner of the land. *Cujus et solum ejus est usque ad coelum et ad inferors* (Co. Litt. 4) is a maxim of English Real Property Law. The maxim means " whose is the soil, his is also that which is above and below it." In Broom's Legal Maxims the following remarks occur :—

" Not only has land in its legal specification an indefinite extent upwards, but in contemplation of law it extends also downwards, so that whatever is in a direct line between the surface of any land and the centre of the earth, belongs to the owner of the surface ; and hence the word "land," which is *nomen generalissimum*, includes not only the face of the earth but everything under or over it ; and therefore, *if a man grants all his lands he grants thereby all his mines, his woods, his waters, and his house as well as his fields and meadows.*"

The Privy Council have held that this presumption as to the extent of the grant when a man grants all his lands does not apply in India. In *Venkata Kumar Mahipati Suryarao Bahadur Guru* v. *Secretary of State*, A.I.R. 1929 P.C. 152 at p. 155, the lower courts based their conclusion that the underground rights passed by the original grant, upon a presumption that in the absence of evidence as to the terms of the grant the grantor passed all that he had to the grantee. The P. C., points out :—

" Such a presumption would be contrary to many decisions of their Lordships' Board in which it has been from time to time pointed out that the rules of English Law as to real property in England can afford no guidance as to what has passed under an Indian grant."

In this case the terms of the grant were wanting and in the case of a statutory grant embodied in the Permanent Settlement Regulations, the rights as to the subsoil are without doubt ambiguous. This view of the Privy Council has the effect of shaking if not demolishing the position taken by Mr. S. C. Mitra when he says that because the Government did not reserve any right whatsoever except as to treasure by the Treasure Trove Act, 1878, minerals must necessarily pass with the surface. In the Regulations themselves there is no reservation as to treasure trove. If the legislature

could properly legislate about treasure troves after the perpetual settlement as far back as 1878 and Mr. Justice S. C. Mitra had nothing to comment regarding the propriety of such legislation, how can it be contended that minerals must necessarily pass with the surface because Government did not reserve any right?

Nor does legislation regarding it show that the rights to subsoil were not in the State or that the latter has given them up. Moreover, there is a fundamental distinction between treasure trove and subsoil minerals. In the early days of man's progress the chance finding of both of them had led people to group them together and in this form they crept into legal literature. (Manu VIII, 39). In legal conception they are widely apart; treasure trove is assumed to have an owner at one time though no one can tell who is the owner of it. Legislation for the one does not mean the giving up of the rights in the other.

The report of the Bengal Land Revenue Commission appointed on November, 5, 1938 with Sir Francis Floud as Chairman has come out. The acquisition of royalties from mines is recommended by the majority. Whether or not this recommendation is accepted, it is recommended by the majority that Government should consider the desirability of legislation declaring that all minerals including oil, not yet worked or discovered will vest in the State. But in a note of dissent appended to the Report the acquisition of minerals is objected to and it is claimed that the right in oil or undiscovered minerals could not vest in the State without payment of compensation.

Whether user of land by the Zamindars for other than agricultural purposes was contemplated by the Permanent Settlement Regulations may be presumed. An analogy though not perfect, may be seen in the statutory vesting of a street in a Municipality where the land over which the streets are formed have not been acquired by the Municipality either by purchase or otherwise. Such vesting does not transfer to the Municipality the rights of the owner in the site or soil over which the street exists. The Municipality does not own the soil from the centre of the earth *usque ad coelum*, but it has the exclusive right to manage and control the surface of the soil and so much of the soil below and of the space above the surface as is necessary to enable it to adequately maintain the street as a street.[1] The latest Indian case on the point is *Chhotalal Panachand* v. *Borough Municipality of Nadiad*, (1940) 187 I.C. 166 (Bom.) Under the English and Indian Law the statutory vesting of a road means the

1. *See* Coverdale v. Charlton, (1879) 4 Q.B.D. 104 and other cases cited in The Law of Municipal Corporations in British India by P. Duraiswami Aiyangar (Second Edition, 1924) pp. 489-490.

vesting of the soil or the surface soil only and not the subsoil. The distinction between the words "Soil" and "Surface" has been clearly recognised.[1]

Dr. Field is of the opinion that the proprietary right conferred by the Permanent Settlement on the Bengal Zamindars was really an estate (in the legal sense) of much greater dimension than the English fee simple. Not only were all other estates destroyed to create it, but by the device of the sale law, as often as the Government revenue (Land-tax) was not paid, all subordinate estates created since the Permanent Settlement, were annihilated and the higher estate handed over to the new possessor free of incumbrances.[2] Under the heading "Modern Legal view of the Zamindari Title," Baden Powell observes :

"The actual right of the landlord, as it now exists, is an estate in the soil certainly less than a "fee simple" of English law, but freely heritable, and alienable and available for mortgage, sale, gift, or bequest."

(Land-systems of British India, Vol. I, Book II, p. 523.) In *Thakooranee Dassee* v. *Bisheswar Mukherji* (The Great Rent Case), 1865 3 W.R. Act X Rulings, p. 29 at p. 34, Trevor, J., observed :

"that the notion of an absolute estate is as alien from the Regulation law as it is from the old Hindu and Mahomedan law of the country."

Macpherson, J., (*ibid.*, at p. 44) stated :

"As regards legislation from 1793 down to Act I of 1859, it, in my opinion, shows clearly that the Zamindar never was, and was never intended to be, the absolute proprietor of the soil. He never was proprietor in the English sense of the term."

Seton Kerr, J., (*ibid.*, at p. 76) was of opinion,

"that by a reference to the whole course of legislation on this important subject from 1793 downwards, as well as to facts disclosed by Indian History, neither by Hindu, by Mohemadan, or by Regulation Law, was any absolute right of property in land vested in the Zamindar *to the exclusion of all other rights : nor was any absolute estate, as we understand the same in England, created in favour of that class of persons.*"

It may be quite legitimately said that the fifteen Judges of the Calcutta High Court were in the above mentioned case, called upon to decide a dispute between a Zamindar and a ryot and the observations quoted above regarding the status of the Zamindar were in relation to the ryot only. All the same, they go to show that the Zâmindar had no "absolute ownership" in the English sense of the term. The contract between the Government and the Zamindar is simple and well-understood, as long as we do not try to

1. *See* the Law of Highways on Land and Water in British India by Barada Kanta Banerjee, (1939) pp. 262-263; Calcutta Municipal Act, III of 1923, Sec. 295; Bengal Local Self Government Act, III of 1875, Sec. 73 as amended by Act XXIV of 1932 Sec. 45.

2. Introduction to the Regulations of the Bengal Code (1893) p. 44, f.n. 1.

combine the ideas of English tenures with it. The Zamindars are not landholders in the English sense of the word.

Mr. Phillips in his Land Tenures of Lower Bengal (T. L. L. 1874-75 at p. 318) has pointed out that it is now the opinion of most authorities on the subject that actual rights of the ryots were proprietory rights.

"They were not derived from or carved out of an original theoretically complete proprietory right in the Zamindari, in the way that all interests in land in England are theoretically derived from or carved out of the fee simple."

It is a strange coincidence that this view of Mr. Phillips found favour with the Privy Council in the very year 1875 in *Sonet Kuar* v. *Himmat Bahadur*, (1875) 1 Cal. 391 (P.C.). This was a case of escheat of a permanent tenure. On behalf of the Zamindar, Mr. Arathoon contended before their Lordships that a Mokurrari tenure not being an independent estate, but being carved out of the Zamindari, has no independent existence and consequently reverts on failure of heirs to the Zamindar, the superior lord, rather than to the Crown. To this their Lordships held that the principles of English feudal law are clearly inapplicable to the Hindu Zamindar: In *Raja Jyoti Prasad Singh Deo v. The Lachipur Coal Co.*, (1911) 14 C.L.J. 361 at p. 366, it has been observed

"that the fact that a permanent tenure escheats to the Crown does not really negative the supposition that the landlord's reversion to mineral right subsists."

This observation, if we somewhat limit the meaning of the word "reversion" is certainly correct. What escheats to the Crown is the tenure and nothing more. Nor does the observation affect the question under discussion in any way. The question is whether the Crown as Lord Paramount has any right to mines, etc., as against the Zamindar.

Mr. Phillips fully anticipated the rival claims between the Zamindar and the Government that were likely to arise by the time "the soil itself acquires a value distinct from the right to occupy and cultivate it." (Land Tenures in Lower Bengal p. 320). He observed: "The result seems to be that even if the Zamindars were thought to be absolute proprietors, they are not declared to be so, but the contrary; and that the term "actual proprietors of the soil" does not mean absolute proprietors of the soil as against the ryots; and that consequently, *as the Government do not declare any intention of giving up to the Zamindars anything but the right to alter assessment, there is nothing to show that the terms used are meant to render the Zamindars absolute proprietors as regards the Government, except in the matter of permanency of revenue*...... Perhaps the questions now discussed may be long before they acquire any practical importance." But the eminent lecutrer however, thought it essential to endeavour to ascertain what was the real effect of the Permanent Settlement. He cited the instance of *Loka*

Mehal, (*Gurroo Perskad Bose* v. *B. Heyra*, (1811) 1 Sel. Reg. 337 : 6 I.D.O.S. 311) in Beerbhoom Zamindari to show "that in practice the right to the soil itself is found separated from the right to the cultivation. The Permanent Settlement in this case does not seem to have been considered to entitle the Zamindar to the minerals as part of the soil for which he was settled with as actual proprietor."

"It is true the settlement for the minerals had been made with the Zamindar, the convenience of such a course being obvious; but the separate assessment and separate conveyance of the Loha Mehal were considered sufficient to show that the Loha Mehal was held in a different right from the Zamindari." (Land Tenures in Lower Bengal p. 422.)

The words "proprietors of the soil" as used in the Bengal and Madras Codes have a technical significance. They could not have been used by the framers of the regulations in the sense in which they would naturally be understood[1].

The term "actual proprietors" says Mr. Phillips

"does not mean what might be supposed *prima facie* but something less, and considering the way in which it is used in a mere enumeration of the persons to be settled with, and unaccompanied by any declaration in the Regulations or proceedings relative to the Decennial Settlement of an intention to confer any proprietary right upon the Zamindars which they did not otherwise possess, save the exemption from alterations in the assessment, it seems to me, with the utmost submission to the authorities which have been referred to, that there is no necessity for enlarging the meaning of the term beyond the actual proprietary right which did exist, especially when, as we have seen, the terms used do not mean that every person actually settled with is an actual proprietor in any sense except that of being actual possessor."

In the Report of the recent Bengal Land Revenue Commission, explaining the constitutional position, the majority express the opinion, that the Permanent Settlement can no longer be regarded as exempt from any modification that may be called for in the national interest. The Majority Report states:

"Whatever may have been the obligations of the British Government as successor to the East India Company, the grant of Provincial Autonomy has created a new situation under which the Government of Bengal is free to consider the problem afresh and to adopt any modifications which they may consider desirable under present conditions. Indeed the appointment of the Commission itself and its terms of reference are evidence that there is no legal or constitutional bar to the reconsideration of the Permanent Settlement, or to its replacement by any other system which is better adapted to the conditions of the present time."

Now the question remains whether the claim of the Crown to subsoil rights has been concluded (1) by the decisions which have held that the Zamindar has the underground rights as against his tenants unless he has expressly parted with them, and (2) by the dis-

1. Jumar Kamakshya Narayan Singh v. Bhuvaneshwar Lal Singh, A.I.R. 1928 Pat. 516 at pp. 526-527, Per Das, J., and the authorities cited therein.

claimer (a) of the Secretary of State for India in his despatch dated 25th March, 1880, (*b*) of the Secretary to the Board of Revenue in his letter dated 9th January, 1872 to the Government of Bengal, (*c*) of other officials in their reports, etc., such as Millet's Report dated 26th March, 1842 (See *Brajanath Bose* v. *Raja Durga Prasad*, 12 C.W.N. 193 at p. 212), (*d*) in the Rules published under the authority of the various departments of local Governments, *e.g.*, Rule 8 of Part II (Rules relating to the Waste lands and Minerals) in the Bihar and Orissa Waste Lands Manual, (1918) which runs thus:

"Except in permanently settled estates, it is presumed throughout India that, in the absence of any distinct judicial precedent or proof of established usage, the state has the right to the minerals."

In the absence of any decision directly settling the issue between the Crown and the Zamindar it cannot be contended that the question has been set at rest. In *Sashi Bhusan Misra* v. *Raja Jyoti Prasad Singh Deo*, (1916) 21 C.W.N. 377 (P.C.) at p. 381 (a case between Zamindar and Talabi Brahmottardar for mineral rights) the Lord Chancellor no doubt observed :

"Now by the Permanent Settlement of 1793, all the mineral rights were confirmed to the Zamindars."

This observation may be explained away as an *obiter dictum*. But on that ground alone it cannot be brushed aside. In *Mata Prasad* v. *Nageshwar Prasad*, 52 I.A. 398 at p. 417 the Privy Council has pointed out that it is not open to the courts in India to question any principle enunciated by the Board "although they have a right in examining the facts of any case before them to see whether and how far the principle on which stress is laid applies to the facts of the particular case."

From other decisions of the Privy Council and the opinions expressed by eminent High Court Judges in India it can however be said that the Privy Council did not definitely decide the point now raised nor finally. In *Raja Durga Prasad* v. *Brajanath Bose*, (1911) 16 C.W.N. 482 (P. C.) at p. 488, overruling the High Court's view that the Government was a necessary party to a dispute relating to minerals, Lord Macnaghten held :

"In their Lordships' opinion the Government is not a necessary or a proper party in this suit. Apparently the Government does not claim the minerals under permanently settled estates. However that may be, the Government has never claimed the minerals under the two Mouzahs or either of them, or put forward any claim inconsistent with the rights now asserted by the Zamindar. The rights of the Government, whatever they are, will not be prejudiced by the result of a suit to which it is not a party."

The above remarks have been quoted by Das, J., in *Debi Singh* v. *F. E. Christian*, A.I.R. 1924 Patna 776. In *Kamakshya Narayan Singh* v. *Thakur Jado Charan Singh*, A.I.R. 1928 Pat. 294 at p. 303 Mullick, J., observed :

"If he is a Zamindar of permanently settled estate under the Regulations of 1793 he is the owner of the soil and whatever may be the claim of the Crown against him, it cannot be denied that as between himself and a tenure holder he has a right to the minerals unless he has expressly parted with them."

In *Secretary of State* v. *Jyoti Prasad*, I.L.R. 53 C. 533. Lord Phillimore delivering the judgment of the Board observed :

"The question whether the mines or minerals belonged to the land owners or to the Government is a far-reaching one, on which they would be unwilling to embark without having the fullest assistance of counsel,"

and the case was decided on another ground. Their Lordships also guarded themselves against endorsing the view of the High Court which, decided the question of mineral rights in favour of the permanently settled Zamindar as against the Secretary of State, by saying that they were not to be held to have given any authority to that part of the decisions of the courts below which they did not touch.

In *Nageswar Bux Roy* v. *The Bengal Coal Co., Ltd.*, L.R. 58 I.A. 29, the title of the proprietor of the Bisrampur estates in Bihar to the ownership of the minerals was challenged by the Bengal Coal Co., Ltd. The High Court held that "the title to the mineral rights in question was at least till 1895 and probably still is vested in the Government": when the matter came before the Privy Council attention was drawn to the fact that the Government was not a party to the case, although important questions "possibly affecting the title of the Government to minerals in India generally were raised." The appeal was allowed to stand over to ascertain the attitude of the Government. In reply to their Lordships' communication, the Secretary of State for India intimated that the Government did not propose to intervene in the appeal. The appeal was thereafter disposed of by the Privy Council "without expressing any opinion as to the soundness" of the view taken by the Patna High Court assuming that the proprietor's title embraced the mineral rights in question.

Again in *Gobinda Narayan* v. *Shama Lal*, L.R. 58 I.A. 125 the Privy Council citing its earlier decision in 16 C.W.N. 432 (P.C.) observed :

"...... the question as to subsoil rights stands upon a different footing. These at all events *where not claimed by the Crown* will be presumed to be in the Zamindar."

Following this Privy Council case, Noor, J., in *Mukta Kashi Patrain* v. *Midnapur Zamindari Co., Ltd.*, A.I.R. 1935 Pat. 33 held that

"the Government is not a party to this suit and is not bound by this decision but as between the plaintiff and the defendant the right in minerals is certainly with the plaintiff. No claim so far has been made by the Government."

It is, therefore clear that the claim of the Crown against the Zamindar regarding mineral right is not a closed question. The

recent tendency of judicial decisions does not preclude the possibility of the Government claiming the subsoil rights in permanently settled estates.

The next point to be considered is as to the effect of the various disclaimers on the part of Government officials of mineral rights. The right to the minerals, it is said, must belong either to the Government or to the Zamindar. But the Government has expressly given up rights to the mines, etc., in favour of the Zamindar in permanently settled estates. In the absence of the Government therefore the Zamindar owns the mines. Have those acts and declarations of officials any creative or disentitling force? One aspect of this point of view assumes the position that the minerals were vested in the Crown even after the Permanent Settlement till they were not disposed of by the disclaimers and the other aspect is that the disclaimers merely confirm what was already in the Zamindars and do not create anything.

The question is whether the events subsequent to Permanent Settlement have created in favour of the Zamindar equities, which if the acts and declarations of officials are found to be not valid, afford an answer to any possible claim by the Government to the subsoil rights. 21 and 22 Vict. C. 106 (An Act for the better Government of India) by S. 41 conferred on the Secretary of State in Council power to dispose of the real estate vested in the Crown in the manner therein prescribed. There is no information whether this disclaimer regarding the mines etc., was sanctioned by the Secretary of State in Council with the concurrence of a majority of votes at a meeting under S. 40 of the above statute. So far as the officials in India are concerned their acts and declarations were dependent for their validity on an adherence to the forms prescribed by statutes 22 and 23, Vict. C. 41.[1]

In *Municipal Corporation of Bombay* v. *Secretary of State*, (1904) I.L.R. 29 Bom. 580 at pp. 606, 607, Jenkins, C.J., held that the Crown comes within the range of the well-known equitable doctrine formulated in *Ramsden* v. *Dyson*, (1866) L.R. 1 H.L. at p. 170 by Lord Kingsdown thus :—

"If a man, under a verbal agreement with a landlord for a certain interest in land or what amounts to the same thing, under an expectation, created or encouraged by the landlord, that he shall have a certain interest, takes possession of such land with the consent of the landlord, and upon the faith of such promise or expectation with the knowledge of the landlord, and without objection by him, lays out money upon the land, a court of equity will compel the landlord to give effect to such promise or expectation."

1. *See* for further information, Government of India, Civil Account Code, Vol. I, Eighth Edition, (Second Reprint), 1935, Appendix, 8-F.

But we find that in *Srinivasa Prasad Singh* v. *Kesho Prasad Singh*, (1911) I.L.R. 38 Cal. 754 at p. 768, Mukherji J., assumed that it is well settled that the effect of the doctrine of equitable estoppel does not apply to the Government in the case of unauthorised acts or omissions on the part of its officers, and agents, nor are public officers concluded by acts done in their official capacity. Though individuals may be estopped by unauthorised acts of their agents apparently within the scope of their agency, the Sovereign power ought not to be bound by the *ultra vires* acts of its agents. In *Secretary of State* v. *Kasturi Reddi*, (1902) I.L.R. 26 Mad. 268 at p. 279 Bhashyam Ayyangar, J., has quoted Story's "Law of Agency" to show this distinction between private and public agents. The powers and duties of the Secretary of State for India are defined by statute and the Secretary of State for India in Council is not competent to act in excess of the authority delegated to him by the Crown.

In this connection it is pertinent to refer to *Secretary of State for India* v. *Srinivasachariar*, 40 M.L.J. 262=I.L.R. 44 Mad. 421 (P.C.). This case was no doubt decided on the construction of the particular grant. But the Privy Council had to deal with events subsequent to the grant which went to show that a higher title was conferred on the Shrotriemdar than what might have been originally thought of. Their Lordships among many matters considered the Regulations, land acquisition proceedings and Standing Orders relating to Inams. In the Standing Orders (edition of 1890) it was declared that "the state lays no claim to minerals in enfranchised Inam lands." But this was changed in the edition of 1907 in favour of claiming the share of the State in all minerals produced in lands held under Inam tenure. This vacillation on the part of the Government of Madras has been interpreted by their Lordships, "as justification for the expressions used and the actings on behalf of the Government in the land acquisition proceedings which were ambiguous and to some extent compromising. "And at most," concluded their Lordships "these proceedings can amount to no more than action taken under a misapprehension of the Government's legal rights, and this could not make the law one way or the other, nor could it affect the Government's title. As affecting the quarries none of *these matters* had any creating or disentitling force." If it is correct to say that at the date of the Permanent Settlement the Zamindar had no right to the minerals and it was vested in the Crown then the Crown's right to the minerals subsists notwithstanding the fact that the Secretary of State had declared his intention not to claim that right. The matter of course, does not rest here. Although the King can never be put out of possession in point of law, by the wrongful entry of a subject yet there may be an adverse possession (60 years) in fact against the

Crown, so as to give the possessor protection under the statute of limitation against the Crown. But the Privy Council in *Bhupendra Narayan Sinha* v. *Rajeshwar Prasad Bhakat*, I.L.R. 59 C. 80=58 I.A. 228 have held that there may be separate ownership and separate possession of separate portions of the subsoil for the purposes of adverse possession. Their Lordships have quoted in this judgment a passage from *Low Moor Co.* v. *Stanley Coal Co.*, (1876) 34 L.T. (n.s.) 186 which runs thus :

> " It is true that in cases where a man has entered upon and taken possession of one seam of coal, and by lapse of time has acquired some title to it, the law will not assume that his possession extends to all other seams of coal lying under that particular one."

With this qualification Zamindars can have prescriptive right against the Crown. Although the Government may not be bound by the acts of its agents beyond their delegated authority as equivalent to expressions of will on its own part, yet for the purpose of affecting the Government with knowledge it may be fully represented by its agents. *Bhaskarappa* v. *Collector, North Kanara*, (1879) I.L.R. 3 Bom. 452 at p. 752.

JOTTINGS AND CUTTINGS.

Odd Expressions.—One or two questions of expression have lately been noted in Court. Thus when a witness repeatedly used the word " definitely " as an affirmative, Mr. Justice Humphreys commented on this overworked substitute for " yes ", and was informed by counsel that it was " B. B. C. English." In another case a King's Counsel gave a lesson in slang to a witness who had confessed that he did not know the difference between " being in bad " and being " on the mat." The man of law told him that the former was American and the latter English. Again, a witness used the expression a " tough crowd " in connection with certain business men and explained that he meant " a pretty hard lot." Mr. Justice Atkinson inferred that it meant the same thing as " hard boiled " and the leader in the case interpreted it as indicating " business men who will take extreme advantage within the limit of the law." Even to-day judges still tend to take a rather unfavourable view of the use of colloquialisms. Hilbery, J., has frowned hard on " pinch " for " steel," and Langton, J., has objected to "bluffing." When there fell on the ears of Judge Tobin at Westminster County Court the words " We find the proofs O. K." he checked the barrister who uttered them, saying "What does that mean ? That is American. Let us have English in England. There seems to be an inferiority complex among the English. They all think the English language is not good enough."—*S.J.*, *1940*, *p. 559*.

Not Correct.—For punctiliousness of expression, Mr. Justice Littledale must have been hard to beat. He once held a declaration bad because it contained the words "A.D. 1834" instead of "In the year of Our Lord 1834." "Your client," he said to counsel, "has committed a blunder, Sir which can only be set right on the usual terms, sir. A. D. is neither English nor Latin, sir: it may mean anything or nothing, sir. It is plain, sir, that there is a material and traversable fact, and no date to it, sir." Hawkins, J., objected when he was told that it was difficult to keep witnesses "up to scratch." "Up to *what?*" he demanded. "I beg your Lordship's pardon," said counsel, "I mean to keep my witness in court." "That is better: I now understand you."—*S.J., 1940, p. 559.*

A Great Change.—The new order in the King's Bench, which brings in an ex-Chancellor to preside there in place of Lord Hewart, is a change of major importance. For one thing, Lord Caldecote's step down to the Bench after occupying the Woolsack constitutes an unconventional piece of legal history, though Lord Lyndhurst did much the same thing, when in 1831, he became Chief Baron of the Exchequer after resigning the Chancellorship which, however, he was to fill twice more, in 1831 and 1841. As for Lord Hewart, his eighteen years' tenure of office has been surpassed by three only of the score of Chief Justices who have sat in his place during the last two and a half centuries. The great Lord Mansfield has an easy lead with thirty-two years which Holt, C.J., and Cockburn, C.J., each in his generation, employed twenty-one years of judicial service to leave an individual mark on the development of the common law. —*S.J., 1940, p. 583.*

Lord Hewart.—Lord Birkenhead has already passed so far into legal history that it is hard to realise that only now is the active legal world saying good-bye to one who was his colleague as a Law Officer of the Crown. Of the man who was Solicitor-General when he was Attorney-General he wrote with strong appreciation: "I have never worked intimately with anyone whose mind marched more closely with my own upon the subjects which engaged them both." And again. "I had at all times the knowledge that nothing committed to him was ever bungled, that he developed an amazing skill in recommending the undesirable and in explaining the inexplicable"—such being all too often the hard lot of a Law Officer. (This praise has a characteristic note of F. E. Smith about it). Gordon Hewart liked company and talk and he was very popular among his parliamentary colleagues in the House of Commons. If all else failed he would be remembered there by the cocktail specially concocted for him one night in the dining room during the time when

he was Attorney-General. Its huge success made it into one of the stock lines and I am told that you are still understood if you say to the waiter: "Bring me an Attorney-General." But there is much else besides his good fellowship whereby the legal world will remember one of the most strongly marked personalities that Lancashire has sent into its midst.—*S.J., 1940, p. 583.*

BOOK REVIEWS.

"FOR NECESSARY ACTION" (Speeches and Judgments of Sir Douglas Young, Chief Justice of Lahore), Edited by Messrs. Shri Ram and V. M. Kulkarni. Published by Indian Cases Ltd., Lahore.

This little volume is a supplement to the earlier volume "For Necessary Action" published in 1938, which according to the Editors' Note, seems to have been accorded adequate response to justify further such publications.

Sir Douglas Young's speeches on many topics and on important occasions such as, the impending World War in 1939, the Judicial Officers of the Punjab Province, The Punjab Boys Scouts Association the Inaugural Address at the Punjab Bar Conference, The Foundation laying of the Physical Training College, the Golden Jubilee of Delhi Bar Association, etc., are collected here, which indicate His Lordship's many-sided interests and activities. To add a bit of variety to these somewhat uninspiring utterances, the Editors have chosen well to include Lady Young's "War Diary" giving us some of her Ladyship's stirring experiences in France during the eventful month of June 1940. Then follow some judgments of the Chief Justice, which are included evidently to complete the miscellany contained in this volume.

The purpose of a compilation like this may not impress the literary reader, but is sure to profit the legal practitioner, whose ambitions of becoming a sound judge require fastidious early mental training and discipline to cultivate detachment and fairness of mind.

"HUSBAND'S RIGHT TO BEAT WIFE", by Anand S. Bhatnagar, B.A., LL.B., published by The Allahabad Weekly Reporter Office, 17 Zero Road, Allahabad. Price Rupee One.

Here have we an interesting title which is sure to create the necessary curiosity both in the legal profession as well as the lay public to know of the way in which law takes note of cruel tendencies in human nature. We are too often reminded of domestic unhappiness rendered unbearable, when added to temperamental unadjustabilities of married couples, the husbands turn out wife-

beaters. Every religion known to us, has only laid the strictest injunction on husbands to desist from the desire to beat their wives. Still we are surprised to learn of sayings like, 'woman is a cooking pot, strike her, who won't speak. Put your fur and you make it warmer, beat a woman and you make her wiser.' The Hindu as well as the Muhammadan Law have only enjoined upon the householder and husband the fairest treatment of women, and the very sacrament idea of the former elevates the conception of married relationship. No doubt extracts from Texts have been quoted to prove how in Hindu thought women, and especially wives, were considered to be mere chattels. But at the same time ample authorities can be gleaned from many sources where women have been accorded places of honour in domestic as well as public life in India of the past.

This pamphlet is the outcome of much provocation of thought owing to the recent decision[1] of the High Court of Madras, in 1936 reversing the Madura District and Sessions Judge's declaration of the husband's rights to beat wives, as coming under the 'General Exceptions' in the Penal Code.

One would do well to read this small volume in order to appreciate the value of restraint that is necessary for men to lead honourable lives. Wayward husbands, often falling into the clutches of bad temper and resorting to violence towards wives, would profit not a little by a perusal of the legal implications such an unseemly conduct on their part might create.

Though we should like to commend this book to the general public, we cannot ignore the numerous printing mistakes that mar the value of an otherwise interesting book.

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1. In re *Subbiah Goundan*, A.I.R. 1936 M. 788.